

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JANE SIMPSON, on Behalf of Herself
and All Others Similarly Situated,

Case No. 2:12-cv-10267

Plaintiff,

v.

Hon. Denise Page Hood

CITIZENS BANK,

Defendant.

SHIRLEY D. LIDDELL, on Behalf of
Herself and All Others Similarly
Situated,

Case No. 2:12-cv-11604

Plaintiff,

v.

Hon. Denise Page Hood

CITIZENS BANK and CITIZENS
REPUBLIC BANCORP, INC.,

Defendants.

**JOINT MOTION FOR APPROVAL OF *CY PRES* DISTRIBUTION
OF SETTLEMENT FUNDS, WITH SUPPORTING BRIEF**

Settlement Class Counsel and Defendants (jointly the “Parties”), submit this Joint Motion for Approval of *Cy Pres* Distribution of Settlement Funds.¹

On January 31, 2013, this Court entered a Final Judgment [Dkt. #50] and an Order Granting Motion For Final Approval Of Class Settlement [Dkt. #49].² The Settlement included a common fund of \$2,000,000 (“Settlement Fund”), to pay all distributions to Settlement Class Members who did not opt out, as well as a Service Award to the Plaintiff, attorneys’ fees and expenses to Class Counsel, and certain other expenses. *See* Settlement Agreement ¶73.

The Settlement provides that any funds remaining in the Settlement Fund after distributions have been made to Settlement Class Members may be distributed through a residual *cy pres* program. *See* Settlement Agreement ¶¶73(e), 91(b). The Settlement also provides that “[t]he Residual *Cy Pres* Program recipient(s) shall be agreed upon by Settlement Class Counsel and Citizens Bank, and approved by the Court.” *Id.* ¶91(b).

As of May 8, 2015, there is \$35,042.45 remaining in the Settlement Fund (“*Cy Pres* Distribution Amount”). By this Joint Motion, the Parties seek the

¹ Because this is a Joint Motion, the Parties have not filed a request for hearing. Should the Court desire a hearing, however, the Parties would be ready, willing, and pleased to appear.

² All capitalized terms have the same meaning ascribed to them in the Settlement Agreement And Release attached to the Motion for Final Approval [Dkt. #44] and the Final Approval Order [Dkt. #49].

Court's approval for distribution of the *Cy Pres* Distribution Amount. The Parties have conferred and agreed that a distribution of this amount to the National Faith HomeBuyers ("Recipient") will promote the goals of benefitting consumer financial literacy education and educating consumers with financial issues through advisor and related services (excluding litigation). The Recipient is located in a market area in which Citizens Bank had branches during the Class Period and has various programs to promote the aforementioned goals. The Parties request that this Court enter an Order authorizing distribution of the *Cy Pres* Distribution Amount to the Recipient for specified purposes consistent with the terms of the Settlement Agreement and Release. A proposed Order is attached.

BRIEF SUPPORTING JOINT MOTION

Issue Presented:

Whether the Court should approve the *cy pres* distribution jointly proposed by the parties, of the residual funds remaining after distribution to Settlement Class Members, as provided in the Court-approved Class Settlement?

Controlling Authority:

“Courts are not in disagreement that *cy pres* distributions are proper in connection with a class settlement, subject to court approval of the particular application of the funds.” *Klewinowski v. MFP, Inc.*, No. 8:13-cv-1204-T-33TBM, 2013 WL 5653402, at *2 (M.D. Fla. Oct. 15, 2013) (quoting *Nelson v. Mead Johnson & Johnson Co.*, 484 Fed. Appx. 429, 435 (11th Cir. 2012)). *See also In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1354 (S.D. Fla. 2011) (“The *cy pres* doctrine permits courts to distribute unclaimed settlement amounts to worthy charities, especially to charities whose purposes harmonize with the underlying lawsuit.”).

Discussion:

This lawsuit was a consumer class action challenging the sequence in which Citizens Bank posted debit card transactions to customer accounts, and the effect the posting order had on the number of overdraft fees that Citizens Bank charged its account holders. Accordingly, the allocation of the *Cy Pres* Distribution

Amount to an organization that will promote financial literacy and improve consumer awareness is appropriate. The Recipient proposed by this Joint Motion would use the funds for laudable programs and initiatives consistent with these goals. The Parties have conferred and agreed that the funds should be distributed to the Recipient.

CONCLUSION

For these reasons, the Parties respectfully request that this Court approve the Parties' proposal for the *cy pres* distribution of the settlement proceeds, as explained above. A proposed Order is attached.

Dated: May 29, 2015.

Respectfully submitted,

KOPELOWITZ OSTROW P.A.

/s/ Jeffrey M. Ostrow
Jeffrey M. Ostrow
200 S.W. First Avenue, 12th Floor
Fort Lauderdale, FL 33301
Telephone: (954) 525-4100
Facsimile: (954) 525-4300
ostrow@kolawyers.com

Class Counsel for the Settlement Class

Respectfully submitted,

DYKEMA GOSSETT PLLC

/s/ Dennis M. Haffey
Dennis M. Haffey (P26378)
Samantha Walls (P75727)
39577 Woodward Avenue, Suite 300
Bloomfield Hills, MI 48304
TEL: 248-203-0813
FAX: 248-203-0763
dhaffey@dykema.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2015, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the attorneys on that system.

DYKEMA GOSSETT PLLC

/s/ Dennis M. Haffey
Dennis M. Haffey (P26378)
Samantha Walls (P75727)
Attorneys for Defendants
39577 Woodward Avenue, Suite 300
Bloomfield Hills, MI 48304
TEL: 248-203-0813
mmitchell@dykema.com

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JANE SIMPSON, on Behalf of Herself
and All Others Similarly Situated,

Case No. 2:12-cv-10267

Plaintiff,

v.

Hon. Denise Page Hood

CITIZENS BANK,

Defendant.

SHIRLEY D. LIDDELL, on Behalf of
Herself and All Others Similarly
Situated,

Case No. 2:12-cv-11604

Plaintiff,

v.

Hon. Denise Page Hood

CITIZENS BANK and CITIZENS
REPUBLIC BANCORP, INC.,

Defendants.

**ORDER GRANTING JOINT MOTION FOR APPROVAL
OF *CY PRES* DISTRIBUTION OF SETTLEMENT FUNDS**

This matter has come before the Court on the Parties' Joint Motion for Approval of *Cy Pres* Distribution of Settlement Funds, and the Court is sufficiently advised.

IT IS HEREBY ORDERED that the Motion is GRANTED. The Parties shall effect the distribution of the *Cy Pres* Distribution Amount to the Recipient identified in the Motion within thirty (30) days of the date of this Order.

Dated: June , 2015

DENISE PAGE HOOD
UNITED STATES DISTRICT JUDGE